

Office of the Secretary of Labor

§ 34.48

(1) The grant applicant or recipient fails or refuses to correct the violation(s) within the applicable time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(2) The Director has not approved an extension of time in which to secure voluntary compliance, pursuant to § 34.45(a)(2)(i)(B), and:

(i) Has not received notification pursuant to § 34.45(a)(2)(iii) that voluntary compliance has been achieved; or

(ii) Has disapproved a written assurance or Conciliation Agreement, pursuant to § 34.45(a)(2)(iv); or

(iii) Has received notice from the Governor, pursuant to § 34.44(a)(2)(ii), that voluntary compliance cannot be achieved.

(b) Upon so concluding, the Director may:

(1) Issue a Final Determination which shall:

(i) Specify the efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;

(ii) Identify those matters upon which the Directorate and the grant applicant or recipient continue to disagree;

(iii) List any modifications to the findings of fact or conclusions set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;

(iv) Determine the liability of the grant applicant or recipient, as applicable, and establish the extent of the liability, as appropriate;

(v) Describe the corrective or remedial action that must be taken for the grant applicant or recipient to come into compliance;

(vi) Indicate that the failure of the grant applicant or recipient to come into compliance within 10 days of the receipt of the Final Determination may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request to file suit;

(vii) Advise the grant applicant or recipient of the right to request a hearing, and reference the applicable procedures at § 34.51; and

(viii) Determine the Governor's liability, if any, in accordance with the provisions of § 34.32; or

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such other action as may be provided by law.

§ 34.47 Notice of finding of noncompliance.

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director shall so notify: (a) the Departmental granting agency; and (b) the Assistant Attorney General.

§ 34.48 Notification of Breach of Conciliation Agreement.

(a) Where a Governor is a party to a Conciliation Agreement, the Governor shall immediately notify the Director of a recipient's breach of any such Conciliation Agreement.

(b) When it becomes known to the Director, through the Governor or by other means, that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.

(c) A Notification of Breach of Conciliation Agreement issued pursuant to this section shall be directed, as applicable, to the Governor and/or other party(ies) to the Conciliation Agreement.

(d) A Notification of Breach of Conciliation Agreement issued pursuant to paragraph (a) of this section shall:

(1) Specify the efforts made to achieve voluntary compliance and indicate that those efforts have been unsuccessful;

(2) Identify the specific provisions of the Conciliation Agreement violated;

(3) Determine liability for the violation and the extent of the liability, as appropriate;

(4) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department

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of Justice with a request from the Department to file suit;

(5) Advise the violating party of the right to request a hearing, and reference the applicable procedures at §34.51(b); and

(6) Include a determination as to the Governor's liability, if any, in accordance with the provisions of §34.32.

(e) Where enforcement action pursuant to a Notification of Breach of Conciliation Agreement is commenced, the Director shall so notify: the Departmental granting agency; and the Governor, recipient or grant applicant, as applicable.

Subpart E—Federal Procedures For Effecting Compliance

§ 34.50 General.

(a) *Sanctions; judicial enforcement.* If, following issuance of a Final Determination pursuant to §34.46, or a Notification of Breach of Conciliation Agreement pursuant to §34.48, compliance has not been achieved, the Secretary may:

(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the Federal financial assistance under JTPA, in whole or in part;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such action as may be provided by law.

(b) *Deferral of new grants.* When termination proceedings under §34.51 have been initiated, the Department may defer action on applications for new financial assistance under JTPA until a Final Decision under §34.52 has been rendered. Deferral is not appropriate when financial assistance under JTPA is due and payable under a previously approved application.

(1) New Federal financial assistance under JTPA includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New Federal financial assistance under JTPA does not include assistance approved prior to the beginning of termination proceedings or increases in

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funding as a result of changed computations of formula awards.

§ 34.51 Hearings.

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director shall include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.* (1) In the case of noncompliance which cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer shall specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement shall have the effect of a denial. Findings of fact not denied shall be deemed admitted. The answer shall separately state and identify matters alleged as affirmative defenses and shall also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.